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## A court for the next decade

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# A court for the next decade

By GOH YIHAN and PAUL TAN

**T**OMORROW marks the appointment of Mr Sundaresh Menon as Singapore's fourth post-independence Chief Justice.

His appointment has drawn accolades. At the same time, the truth is that every new appointment of a CJ carries with it an element of uncertainty: How will the appointment influence the development of the legal system?

Singapore's legal system after independence has developed in different directions as distinct challenges confront the judiciary at different times. Each CJ has had to respond to these challenges and, in the process, led a Court of Appeal with its own character. One common thread, however, has been the continued development and refinement of Singapore law and its institutions.

The first CJ in independent Singapore, Mr Wee Chong Jin, presiding during a period of a very different social, economic and political climate to today's prosperous and stable Singapore, faced the challenge of an embryonic Singapore legal system.

Possibly his most visible contribution to the rule of law was his presidency of the Constitutional Commission that contributed to the formulation of Singapore's Constitution. Equally, in other areas of law, CJ Wee's Court of Appeal had to venture where no Singapore court had gone. In the process, he has left an indelible imprint on Singapore law.

The second CJ, Mr Yong Pung How, embraced technology and case management systems to clear a backlog of cases that had become an issue as the legal system grew in size and sophistication. CJ Yong also instituted reforms to attract talent to the Legal Service and judiciary. More significantly, he presided during a period that saw a series of legislative reforms that encouraged the growth of local jurisprudence, including the passing of the Application of English Law Act and the abolition of Privy Council appeals.

As a result, Singapore courts became a model for efficiency, and judgments reflected an increased independence from foreign cases. The growth of Singapore law, as well as the sophistication of such, were both evident.

With efficiency ensured, the third CJ, Mr Chan Sek Keong, set out to further enhance the administration of justice. In one of his first speeches as CJ, he said that efficiency "should not be pursued to the point where it starts to yield diminishing returns in the dispensation of justice".

His Court of Appeal undertook extensive development of local law in both the commercial and public domains. By the end of his tenure, CJ Chan was widely acknowledged as one who accorded respect and understanding to lawyers and litigants alike, with an especial heart on the justice of

the case.

Significantly, among his many initiatives, CJ Chan issued a Practice Direction that required lawyers to cite Singapore cases first, where available. He also encouraged local academics to write on Singapore law. Both these measures, along with his court's decisions, have helped Singapore law mature.

So what can we expect from CJ Menon's Court of Appeal?

Indications are that this will be a very special apex court.

For one thing, CJ Menon is being appointed at the relatively young age of 50. He will have the security of tenure for at least the next 15 years to forge jurisprudential and institutional developments.

CJ Menon will have the benefit of two other equally youthful appointments in Judges of Appeal Andrew Phang and V. K. Rajah. This potentially means a permanent court for the next decade – a first in our legal history.

CJ Menon will also have the insight of the Court of Appeal's vice-president, Judge of Appeal Chao Hick Tin, who, remarkably, will now have served with all four

post-independence CJs.

JA Chao's experience will be invaluable as CJ Menon's appointment comes at a time of serious efforts not only to develop Singapore law, but also to promote Singapore as a centre for global dispute resolution and the use of its law in such disputes. In this respect, Singapore now has a Court of Appeal whose four members come from professional backgrounds that will assist the realisation of this ambition.

In terms of his jurisprudence, CJ Menon's judgments as a judicial commissioner in 2006-2007 could be said to bear some hallmarks.

First, reflecting his practice as an international lawyer, his judgments often consider the decisions of foreign courts, including those as far as the United States and South Africa. However, they are not blindly followed. Instead, bold – yet pragmatic – jurisprudential thinking is evident.

In a dispute between Hong Leong Singapore Finance and United Overseas Bank, he fashioned a creative remedy that neither party had initially advanced. In another judgment, he gave much-needed

clarity to the different tests for bias that were being applied by the Australian and English courts.

Such independent thought characterises CJ Menon's work. Some 12 years ago, he published a note questioning a decision of his predecessor, who was then a High Court judge. In his practice, he has taken on controversial cases, including challenging the Court of Appeal's power to reconsider its previous decision.

Second, it appears that CJ Menon believes in the virtues of judicial economy or modesty. In a few cases involving difficult legal issues, he expressly declined to lay down guidelines for future cases, preferring to resolve them case by case.

Whether this will change now that he is on the apex court, whose function is partly to guide the lower courts in subsequent cases, remains to be seen.

Third, when it comes to matters of criminal law, CJ Menon's judgments will likely walk the line between firmness and compassion. As a judicial commissioner, he declined to impose a deterrent sentence on a man who had stabbed his wife, in part due to a long history of him being abused by her.

His concern for procedural fairness is also exemplified by his involvement, as Attorney-General, in the recent revision to the criminal procedure code strengthening the rights of accused persons.

Singapore's legal landscape is undoubtedly set for exciting times.

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